

Federal Appointments

As an employer, the Federal government is unique. In the private sector, there are generally two types of “appointments” – the “at will” appointment and the “contract” appointment. The vast majority of private sector employees hired by a company or firm are hired as “at will” employees. While they may not realize it, this typically means that the private-sector employee can be fired for any reason, or no reason, but not for an illegal reason. As a practical matter, then, most “at will” workers can be fired at any time, for almost any reason. There are some limits, of course - an “at will” employee cannot be fired because of his or her race, color, religion, sex, national origin, age (if over the age of 40), or disability. In addition, “at will” employees generally cannot be fired for “blowing the whistle” on illegal practices within a company. Private sector employers may provide their employees with further rights through employment manuals and other means, but on average, at will employees have few legal rights when it comes to their employment.

Private sector “contract” employees generally are fewer in number than at will employees, but they usually have more job protections. An example of a “contract” employee may be a doctor or nurse who is hired for a specific term and cannot be removed before the term expires unless it is for “good cause.” “Good cause” is often spelled out in the contract as misconduct or poor performance. The company usually has specific procedures in place to investigate and adjudicate a claim of misconduct or poor performance against such employees.

Of course, many private sector employees belong to unions, and the labor agreement between the union and their employer usually gives the employee additional rights beyond what they would have as “at will” or contract employees, such as the right to arbitration.

Appointments within the Federal sector, however, are a little more complex. When hiring a new employee, a Federal department or agency must classify the employee’s appointment as “career,” “career conditional,” “temporary,” or “term.” Moreover, there are “excepted service appointments” – appointments made under Schedules A, B, and C. Each of these appointments is explained in detail below. As a Federal employee, it is important to know which type of appointment you have, since your appointment affects your job rights.

At the end of this chapter, some additional topics, such as appointments of non-citizens and dual employment (holding more than one federal job), will also be discussed.

Career and Career-Conditional Appointments

Permanent employees are generally hired into the Federal government under a career-conditional appointment. A career-conditional employee must complete three years of substantially continuous service before becoming a full career employee. This 3-year period is used to determine whether or not the Government is able to offer the employee a career.

Service Requirement for Career Tenure

An employee must have 3 years of substantially continuous creditable service to become a career employee, i.e. obtain career tenure. The 3-year period must begin and end with nontemporary

employment in the competitive service. Generally, substantially continuous creditable service must not include any break in service of more than 30 calendar days. If an employee does not complete the 3-year period, a single break in service of more than 30 calendar days will require the employee to serve a new 3-year period. (Periods of time in a nonpay status are not breaks in service and do not require the employee to begin a new 3-year period. However, they may extend the service time needed for career tenure.) Career-conditional employees automatically become career employees upon completion of this service requirement. Employees with career tenure have a higher retention standing during layoffs.

Required Probationary Period

The first year of service of an employee who is given a career-conditional appointment is considered a probationary period. The probationary period is really the final and most important step in the examining process. It affords the supervisor an opportunity to evaluate the employee's performance and conduct on the job, and to remove the person without undue formality, if necessary. A person who is transferred, promoted, demoted, or reassigned before completing probation is required to complete the probationary period in the new position. Prior Federal civilian service counts toward completion of probation if it is in the same agency, same line of work, and without a break in service.

Care should be taken to distinguish the 1-year probationary period from the 3-year career-conditional period. The probationary period is used to determine the employee's ability and fitness required for permanent Government service. The 3-year career-conditional period is established only to measure the employee's interest in, and the Government's ability to provide, a career in the Federal service. (For more information on the probationary period, see Chapter 2, "The Probationary Period.")

Acquiring Competitive Status

Competitive status is a person's basic eligibility for assignment (e.g., by transfer, promotion, reassignment, demotion, or reinstatement) to a position in the competitive service without having to compete with members of the general public in an open competitive examination. When a vacancy announcement indicates that status candidates are eligible to apply, career employees and career-conditional employees who have served at least 90 days after competitive appointment may apply. Once acquired, status belongs to the individual, not to a position.

Temporary and Term Appointments

Temporary and term appointments are used to fill positions when there is not a continuing need for the job to be filled. Neither type of appointment is a permanent one, so they do not give the employee competitive status or reinstatement eligibility. Because temporary and term employees do not have status, they may not apply for permanent appointments through agency internal merit promotion procedures, which are used for filling positions from the ranks of current and former permanent Federal employees. However, qualifying experience gained while employed in a temporary or term position is considered when applying later for a permanent position.

Defining "Temporary Appointment"

A temporary appointment is an appointment lasting one year or less, with a specific expiration date. It is appropriate when an agency expects there will be no permanent need for the employee. An agency may make a temporary appointment to:

- fill a short-term position that is not expected to last more than one year; or

- meet an employment need that is scheduled to be terminated within one or two years for reasons such as reorganization, abolishment, or the completion of a specific project or peak workload; or
- fill positions that involve intermittent (irregular) or seasonal (recurring annually) work schedules.

A temporary employee does not serve a probationary period and is not eligible for promotion, reassignment, or transfer to other jobs.

Time Limits

Generally, an agency may make a temporary appointment for a specified period not to exceed one year. The appointment may be extended up to a maximum of one additional year. Appointments involved with intermittent or seasonal work may be extended indefinitely if extensions are made in increments of one year or less and the employment totals less than six months (1,040 hours) in a service year.

How Temporary Employees Are Selected

Most vacancies are filled through open competitive examination procedures. However, an agency may give a temporary appointment noncompetitively to certain individuals (i.e., a reinstatement eligible, certain present and former Peace Corps employees, a 30% disabled veteran, and veterans eligible for a veterans' readjustment appointment).

Benefits

Temporary employees are eligible to earn leave and are covered by Social Security and unemployment compensation, but do not receive the other fringe benefits provided to career civil service employees. Current law allows temporary employees to purchase health insurance after they have one year of temporary service, but the employee must pay the full cost with no Government contribution. Employees are not eligible for coverage under the Federal Employees' Group Life Insurance program or the Federal Employees Retirement System.

Term Appointments

Under term employment, the employing agency hires the term appointee to work on a project that is non-permanent in nature. The employment is for a limited period of time, lasting for more than one year but for no longer than four years. Some reasons for making a term appointment may include:

- project work;
- extraordinary workload;
- scheduled abolishment of a position;
- reorganization;
- uncertainty of future funding;
- contracting out of the function.

How Term Employees Are Selected

Most vacancies are filled through open competitive examination procedures. However, an agency may give a term appointment noncompetitively to certain individuals (i.e., reinstatement eligibles, veterans eligible for a veterans readjustment appointment, and 30% disabled veterans). The employment of a term employee ends automatically on the expiration of their term appointment. The first year of service is considered a trial period and the agency may terminate a term employee at any time during the trial period.

Benefits For Term Employees

Term employees are eligible to earn leave and generally have the same benefits as permanent employees when it comes to health and life insurance, within-grade increases, and Federal Employees Retirement System and Thrift Savings Plan coverage.

Excepted Service: Schedules A, B and C Appointments

The “excepted service” consists of all positions in the Executive Branch that statute, the President, or OPM has specifically excepted from the competitive service or the Senior Executive Service. This section covers excepted service positions in Schedules A, B, and C.

Schedule C Positions and Appointments

Employees in the excepted service who are subject to change at the discretion of a new Administration are commonly referred to as “Schedule C” employees. Schedule C positions are excepted from the competitive service because they have policy-determining responsibilities or require the incumbent to serve in a confidential relationship to a key official. Most Schedule C positions are at the GS-15 level and below. Appointments to Schedule C positions require advance approval from the White House Office of Presidential Personnel and OPM, but appointments may be made without competition. OPM does not review the qualifications of a Schedule C appointee - final authority on this matter rests with the appointing official.

Agencies may separate Schedule C appointees from employment at any time if the confidential or policy-determining relationship between the incumbent and his or her superior ends. Schedule C appointees are not covered by statutory removal procedures and generally have no rights to appeal removal actions to the Merit Systems Protection Board. This is true regardless of veterans’ preference or length of service in the position. Agencies should consult their General Counsel or OPM’s General Counsel on Schedule C separations.

Other Excepted Service Positions and Appointments

In addition to the policy-determining or confidential positions described above, Congress, the President, or OPM can except certain agencies and groups of positions from the competitive service and the Senior Executive Service. These exceptions are made for a variety of reasons, none of which relates to policy-determining or confidential factors.

Positions Excepted by Statute and the President. Examples of positions that have been excepted by statute include those in the Foreign Service; the Federal Bureau of Investigation; the Tennessee Valley Authority; the General Accounting Office; the Postal Service; and certain employees within the Department of Veterans Affairs. Most of these positions are under separate merit systems. Examples of Presidential exceptions include jobs overseas held by foreign nationals.

Positions Excepted by OPM. There are two other categories of positions that OPM has administratively excepted from the competitive service because it is not practical to hold competitive examinations for them. These are Schedule A and Schedule B positions.

-- Schedule A Positions. Examples include chaplains, teachers in military dependent school systems overseas, faculty positions of service academies, and certain positions at isolated localities. Attorney positions are also in Schedule A because OPM is prohibited in its appropriations legislation from spending funds to examine for attorney positions.

-- Schedule B Positions. Schedule B is used primarily for career-related work study positions.

The procedural and appellate rights governing the removal of Schedule A and B appointees vary. Employees with veterans' preference who have 1 year of qualifying service are entitled to statutory procedural and appellate rights if they are removed from the Federal service for conduct or performance reasons. In addition, the Due Process Amendments of 1990 [P.L. 101-376, August 17, 1990] gave procedural and appeal protections to many excepted service employees who do not have veterans preference, provided they have completed 2 years of qualifying service.

Excepted Service Agencies

Most Federal civilian positions are part of the competitive civil service. To obtain a Federal job, you must compete with other applicants in open competition. Some agencies, however, are excluded from the competitive civil service procedures. This means that these agencies have their own hiring system that establishes the evaluation criteria they use in filling their internal vacancies. These agencies are called "excepted service agencies."

If you are interested in employment with an excepted service agency, you should contact that agency directly. OPM does not provide application forms or information on jobs in excepted service agencies or organizations. Some examples of excepted service agencies and departments are the: Federal Reserve; Central Intelligence Agency; National Security Agency; U.S. Nuclear Regulatory Commission; Post Rates Commission; Tennessee Valley Authority; and Library of Congress.

Employment of Noncitizens

The Federal government gives strong priority to hiring U.S. citizens and nationals, but non-citizens may be hired in certain circumstances. Agencies considering non-citizens for Federal employment in the competitive service must follow the usual selection procedures and also meet the requirements of all three of the following: (1) immigration law; (2) an appropriations act ban on paying certain non-citizens; and (3) an executive order restriction on appointing non-citizens in the competitive service. Agencies considering non-citizens for Federal employment in the excepted service and Senior Executive Service must meet the first two requirements. In addition, agencies are responsible for applying any citizenship requirements that may appear in their individual agency's authorization and appropriation laws.

Several factors determine whether a Federal agency may employ a noncitizen. They are: Executive Order 11935 requiring citizenship in the competitive civil service, whether the position is in the competitive service, the excepted service or Senior Executive Service, the annual appropriations act ban on paying aliens from many countries, and the immigration law ban on employing aliens unless they are lawfully admitted for permanent residence or otherwise authorized to be employed.

Executive Order 11935 on the Competitive Civil Service

Under Executive Order 11935, only United States citizens and nationals (residents of American Samoa and Swains Island) may compete for competitive jobs. Agencies are permitted to hire noncitizens only when there are no qualified citizens available. A noncitizen hired in the absence of qualified citizens may only be given an excepted appointment, and does not acquire competitive civil service status. He or she may not be promoted or reassigned to another position in the competitive service, except in situations where a qualified citizen is not available. The noncitizen may be hired only if permitted by the appropriations act and the immigration law.

Excepted Service and Senior Executive Service

As explained above, some Federal agencies (among them the United States Postal Service, the Tennessee Valley Authority and the Federal Bureau of Investigation), and some types of positions (for example, lawyers and chaplains) are excepted from OPM procedures for filling jobs. An agency may hire a qualified noncitizen in the excepted service or Senior Executive Service, if it is permitted to do so by the annual appropriations act and the immigration law.

Many agencies have executive level positions in the Senior Executive Service.

Appropriations Act Restrictions

Congress prohibits the use of appropriated funds to employ noncitizens within the United States.

Certain groups of noncitizens are not included in this ban. They are:

- Persons who owe permanent allegiance to the United States (for example, natives of American Samoa and Swains Island).
- Aliens from Cuba, Poland, South Vietnam, countries of the former Soviet Union, or the Baltic countries (Estonia, Latvia, and Lithuania) lawfully admitted to the United States for permanent residence.
- South Vietnamese, Cambodian or Laotian refugees paroled into the United States after January 1, 1975.
- Nationals of the People's Republic of China who qualify for adjustment of status pursuant to the Chinese Student Protection Act of 1992.
- Citizens of Ireland, Israel, or the Republic of the Philippines.
- Nationals of countries currently allied with the United States in a defense effort, (as determined by the Office of the Assistant Legal Adviser for Treaty Affairs, Department of State).
- International broadcasters employed by the U.S. Information Agency.
- Translators employed temporarily.
- People employed up to 60 days on an emergency basis in the field service.

Also, some agencies are exempt from these restrictions.

Although the groups above are not prohibited from being paid from agency appropriated funds, group members are still subject to the requirements of Executive Order 11935, and to the immigration law, as specified below.

Immigration Law Requirements on Employing Citizens and Aliens

For any work to be performed in the United States, immigration law requires private and public employers to hire only individuals who are eligible to be employed. Those individuals are:

- a citizen (either by birth or naturalization) or national of the United States,
- an alien assigned by the Immigration and Naturalization Service (INS) to a class of immigrants authorized to be employed (aliens who are lawfully admitted for permanent residence by INS are the largest class of aliens in this category), or
- an individual alien who is expressly authorized by INS to be employed.

Questions about an individual's citizenship, nationality, immigration status, and eligibility for employment under the immigration law, should be directed to the local INS office. Although an alien may be authorized to work under the immigration laws, he or she is still subject to the requirements of Executive Order 11935 and appropriations act restrictions as stated above.

Noncitizens who have questions about employment eligibility should contact the agency in which they are interested in working for further guidance.

Dual Employment

Generally federal employees, civilian and military, are prohibited from receiving pay from more than one federal government source. The laws on dual employment apply to agencies in the executive, legislative and judicial branches, corporations owned or controlled by the government, and nonappropriated fund organizations under the jurisdiction of the armed forces.

Civilian federal employees can hold more than one government job in some limited situations. An individual may have more than one federal appointment, but may receive pay from more than one civilian job only when:

- the jobs total no more than 40 hours of work a week, Sunday to Saturday (excluding overtime); or
- there is an authorized exception.

This means an employee on leave without pay (LWOP) from one position may be paid for another position. Paid leave, however, counts toward the 40-hour-per-week limitation unless there is an authorized exception.

Authorized exceptions to the limitation on pay for more than 40 hours a week include:

- exceptions in law, e.g., with agency approval federal employees can work for the U. S. Postal Service;
- emergency services relating to health, safety, protection of life or property, or national emergency;
- expert and consultant jobs when working different hours as an intermittent employee; and
- fee paid on other than a time basis (lump-sum pay for a report, research product or service not based on the number of hours or days worked).

Also, in unusual circumstances, federal agencies can make exceptions to obtain required personal services when they cannot be readily obtained otherwise.

Civilian Federal Employees Working in Outside (Nonfederal) Jobs

Federal employees shall not engage in outside employment or activities that conflict with official duties and responsibilities. Many federal agencies have written policies that allow outside employment, especially when it is not related to the federal work and will not result in, or create the appearance of, a conflict of interest. Agency policies may require employees to receive prior approval for outside employment even when co-workers have similar outside jobs. Ask your supervisor, agency ethics official, and agency personnel office for further information.

Uniformed Service Members Holding Civilian Government Jobs

Members of a Uniformed Service (Army, Navy, Marines, Air Force, etc.) on active duty may not receive pay from another government position, except during terminal leave, or unless specifically authorized by law. Enlisted personnel may be employed part-time during off-duty hours in Department of Defense nonappropriated fund activities. Members of the Armed Forces Reserves and members of the National Guard may receive military pay and allowances in addition to pay from another government position.

Note: With appropriate agency approval, federal employees may work for the District of Columbia (D.C.) government.

Employment of Retirees (Dual Compensation Issues)

Retirees can work for the federal government. However, federal civilian retirees will have their salary reduced by the amount of their annuity unless an exception is approved. In addition, retirees under age 70 may have their Social Security check reduced if their annual earnings exceed the established limit.

Federal Retirees under CSRS and FERS

Most retirees under the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS) will have their hourly pay reduced by the hourly rate of the annuity when reemployed by the federal government. These laws apply to federal jobs in the legislative, executive, and judicial branches (including government corporations, nonappropriated fund instrumentalities under the jurisdiction of the armed forces, and the U.S. Postal Service). Generally, the law requires that the employing agency reduce the retiree's hourly pay by the hourly rate of their annuity. This reduction equals the retiree's annual annuity divided by 2087. For example, if a job's gross pay is \$15.80 per hour and a retiree's hourly annuity rate is \$5.80, then the retiree's gross pay is reduced to \$10.00 per hour. If a retiree works for a year, then his or her retirement is recalculated with this added service.

Note: If retirement was due to involuntary separation or disability, the annuity may terminate upon reemployment. Retirees in this situation should check with the employing agency or call OPM's Retirement Information Office toll-free at 1-888-767-6738 or at (202) 606-0500, if calling from the Washington, D.C. area.

Military Retirees

Retirees of U.S. Uniformed Services are now treated as other retirees (see next heading). Prior reductions in military retired pay were repealed by P.L. 106-65 in October 1999.

Other Retirees - Private Sector, State, and Local Government

Generally, when other retirees become a federal employee there is no reduction in their federal pay or in their retirement pay or annuity. However, paid work may reduce Social Security retirement, survivors or disability benefits if earnings exceed the established limits. For details, contact the Social Security Administration at 1-800-772-1213.

Exceptions for CSRS and FERS Retirees

Federal agencies may request authority to waive the salary reduction in special and unusual circumstances. The law limits waivers to "positions for which there is exceptional difficulty recruiting or retaining a qualified employee" and to temporary employment while "the authority is necessary due to an emergency involving a direct threat to life or property or other unusual circumstances."

Generally, to qualify for an exception, a retiree must be the only qualified applicant available or be uniquely qualified for the job. The USAJOBS (www.usajobs.opm.gov) vacancy notice will usually indicate when an agency has waiver authority or anticipates requesting it.

Retaining Reinstatement Eligibility

Retirees who obtained federal reinstatement eligibility before they retired do not lose it because they retire.